

## § 108.8

## 12 CFR Ch. I (1–15 Edition)

the presiding officer, who shall have authority to correct the record *sua sponte* or upon the motion of any party.

(f) The parties may, in writing, jointly waive an oral hearing and instead elect a hearing upon a written record in which all evidence and argument would be submitted to the presiding officer in documentary form and statements of individuals would be made by affidavit.

### § 108.8 Default.

If the subject individual fails to file a petition for a hearing, or fails to appear at a hearing, either in person or by attorney, or fails to submit a written argument where oral argument has been waived pursuant to § 108.7(d) or (f) of this part, the Notice shall remain in effect until the information, indictment, or complaint is finally disposed of and the Order shall remain in effect until terminated by the OCC.

### § 108.9 Rules of evidence.

(a) Formal rules of evidence shall not apply to a hearing, but the presiding officer may limit the introduction of irrelevant, immaterial, or unduly repetitious evidence.

(b) All matters officially noticed by the presiding officer shall appear on the record.

### § 108.10 Burden of persuasion.

The petitioner has the burden of showing, by a preponderance of the evidence, that his or her continued service to or participation in the conduct of the affairs of the association does not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association.

### § 108.11 Relevant considerations.

(a) In determining whether the petitioner has shown that his or her continued service to or participation in the conduct of the affairs of the association would not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association, in order to decide whether the Notice or Order should be continued, terminated, or otherwise modified, the OCC will consider:

(1) The nature and extent of the petitioner's participation in the affairs of the association;

(2) The nature of the offense with which the petitioner has been charged;

(3) The extent of the publicity accorded the indictment and trial; and

(4) Such other relevant factors as may be entered on the record.

(b) When considering a request for the termination or modification of a Notice, the OCC will not consider the ultimate guilt or innocence of the petitioner with respect to the criminal charge that is outstanding.

(c) When considering a request for the termination or modification of an Order which has been issued following a final judgment of conviction against a subject individual, the OCC will not collaterally review such final judgment of conviction.

### § 108.12 Proposed findings and conclusions and recommended decision.

(a) Within 30 days after completion of oral argument or the submission of written argument where oral argument has been waived, the presiding officer shall file with and certify to the OCC for decision the entire record of the hearing, which shall include a recommended decision, the Notice or Order, and all other documents filed in connection with the hearing.

(b) The recommended decision shall contain:

(1) A statement of the issue(s) presented,

(2) A statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record, and

(3) An appropriate recommendation as to whether the suspension, removal, or prohibition should be continued, modified, or terminated.

### § 108.13 Decision of the OCC.

(a) Within 30 days after the recommended decision has been certified to the OCC, the OCC shall issue a final decision.

(b) The OCC's final decision shall contain a statement of the basis therefor. The OCC may satisfy this requirement where it adopts the recommended decision of the presiding officer upon

## Comptroller of the Currency, Treasury

## § 109.1

finding that the recommended decision satisfies the requirements of § 109.38 of this chapter.

(c) The OCC shall serve upon the petitioner and the representative of the Enforcement and Compliance Division a copy of the OCC's final decision and the related recommended decision.

### § 108.14 Miscellaneous.

The provisions of §§ 109.10, 109.11, and 109.12 of this chapter shall apply to proceedings under this part.

## PART 109—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

### Subpart A—Uniform Rules of Practice and Procedure

- Sec.
- 109.1 Scope.
- 109.2 Rules of construction.
- 109.3 Definitions.
- 109.4 Authority of the Comptroller.
- 109.5 Authority of the administrative law judge.
- 109.6 Appearance and practice in adjudicatory proceedings.
- 109.7 Good faith certification.
- 109.8 Conflicts of interest.
- 109.9 Ex parte communications.
- 109.10 Filing of papers.
- 109.11 Service of papers.
- 109.12 Construction of time limits.
- 109.13 Change of time limits.
- 109.14 Witness fees and expenses.
- 109.15 Opportunity for informal settlement.
- 109.16 OCC's right to conduct examination.
- 109.17 Collateral attacks on adjudicatory proceeding.
- 109.18 Commencement of proceeding and contents of notice.
- 109.19 Answer.
- 109.20 Amended pleadings.
- 109.21 Failure to appear.
- 109.22 Consolidation and severance of actions.
- 109.23 Motions.
- 109.24 Scope of document discovery.
- 109.25 Request for document discovery from parties.
- 109.26 Document subpoenas to nonparties.
- 109.27 Deposition of witness unavailable for hearing.
- 109.28 Interlocutory review.
- 109.29 Summary disposition.
- 109.30 Partial summary disposition.
- 109.31 Scheduling and prehearing conferences.
- 109.32 Prehearing submissions.
- 109.33 Public hearings.
- 109.34 Hearing subpoenas.

- 109.35 Conduct of hearings.
- 109.36 Evidence.
- 109.37 Post-hearing filings.
- 109.38 Recommended decision and filing of record.
- 109.39 Exceptions to recommended decision.
- 109.40 Review by the Comptroller.
- 109.41 Stays pending judicial review.

### Subpart B—Local Rules

- 109.100 Scope.
- 109.101 Appointment of Office of Financial Institution Adjudication.
- 109.102 Discovery.
- 109.103 Civil money penalties.
- 109.104 Additional procedures.

### Subparts C–D [Reserved]

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### Subpart A—Uniform Rules of Practice and Procedure

#### § 109.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure with regard to Federal savings associations applicable to adjudicatory proceedings as to which hearings on the record are provided for by the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the OCC should issue an order to approve or disapprove a person's proposed acquisition of an institution;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78o–5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for